

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PROKOP LABS, LLC, a Washington limited  
liability company,

Plaintiff,

v.

STAPLES, INC., a Delaware corporation;  
STAPLES THE OFFICE SUPERSTORE LLC, a  
Delaware limited liability company; BELKIN,  
INC., a Delaware corporation; BELKIN  
LOGISTICS, INC., a Delaware corporation; VELO  
ENTERPRISE CO., LTD., a Taiwan corporation,

Defendants

and

S.P. RICHARDS COMPANY, a Georgia  
corporation,

Defendant/Third Party Plaintiff,

v.

AIDATA U.S.A. CO., LTD., a Michigan  
corporation and AIDMA ENTERPRISE CO., LTD,  
a Taiwan corporation,

Third Party Defendants.

No. 07-1094 MJP

DEFENDANT/THIRD PARTY  
PLAINTIFF S.P. RICHARDS  
COMPANY'S THIRD PARTY  
COMPLAINT AGAINST THIRD  
PARTY DEFENDANT AIDATA  
U.S.A. CO., LTD. AND  
AIDMA ENTERPRISE CO., LTD.

JURY TRIAL DEMANDED

DEFENDANT S.P. RICHARDS  
COMPANY'S THIRD PARTY COMPLAINT- 1

MERRICK, HOFSTEDT & LINDSEY, P.S.  
ATTORNEYS AT LAW  
710 NINTH AVENUE  
SEATTLE, WASHINGTON 98104  
(206) 682-0610

COMES NOW Defendant/Third Party Plaintiff S.P. Richards Company ("S.P. Richards") pursuant to Fed. R. Civ. P. 14 and files a Third Party Complaint against Third Party Defendants Aidata USA ("Aidata") and Aidma Enterprise Co., Ltd ("Aidma") and states as follows:

### **I. PARTIES**

1. Third Party Plaintiff S. P. Richards is a Georgia corporation with its principal place of business at 6300 Highlands Pkwy. SE, Smyrna, GA 30082-7231 and is a leading wholesale distributor of office and other business products.

2. Upon information and belief, Third Party Defendant Aidata U.S.A. Co., Ltd. is a Michigan corporation with its principal place of business at 24689 Picara Drive, Novi, Michigan 48374.

3. Upon information and belief, Third Party Defendant Aidma Enterprise Co., Ltd. is a Taiwan corporation with its principal place of business at 19FL.-3, No. 79, Sec. 1, Hsin Tai Wu Road, Hsi-Chih City, Taipei, Taiwan.

### **II. JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, and/or 1338. The Court can properly exercise personal jurisdiction over Third Party Defendants because upon information and belief each transacts business within the state of Washington, sells or offers to sell infringing products within this state or contracts with others to sell or offer to sell infringing products in the state of Washington including through an interactive Internet Web site.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b).

**III. FACTS**

6. Velo Enterprise Co., Ltd. ("Velo") manufactures and sells gel wrist rests and mousepads which S.P. Richards markets and sells under the Compucessory® brand name including model numbers CCS 23815, CCS 23816, CCS 23817, CCS 23819, CCS 45162, CCS 55151, CCS 23718, CCS 55302, and CCS 55303.

7. Velo sells the gel wrist rests and mousepads to Aidata and Aidma which in turn sells that product to S.P. Richards.

8. In Paragraph 14 of its Complaint, Plaintiff Prokop Labs, LLC alleges that the gel wrist rest and mousepads in suit infringe U.S. Patent No. 5,566,913.

**COUNT 1: INDEMNIFICATION UNDER THE UNIFORM COMMERCIAL CODE**

9. S.P Richards incorporates herein and realleges, as if fully set forth in this Paragraph, the allegations in Paragraphs 1-8 above, inclusive.

10. S.P Richards has incurred, and will continue to incur loss, damage, cost and expense, including, but not limited to, attorneys' fees and expenses, as a result of this action.

11. If S.P. Richards is found to infringe U.S. Patent No. 5,566,913, then Aidata and Aidma have failed to comply with Uniform Commercial Code § 2.312(3) Warranty Against Infringement in selling its product and Aidata and Aidma are liable for all of the loss, damage, cost and expense, including without limitation attorneys' fees and expenses that S.P. Richards incurs from buying the gel wrist rest and mousepad from Aidata and Aidma.

**COUNT 2: COMMON LAW INDEMNIFICATION**

12. S.P Richards incorporates herein and realleges, as if fully set forth in this Paragraph, the allegations in Paragraphs 1-10 above, inclusive.

DEFENDANT S.P. RICHARDS  
COMPANY'S THIRD PARTY COMPLAINT- 3

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1           13.     S.P Richards has incurred, and will continue to incur loss, damage, cost and  
2 expense, including, but not limited to, attorneys' fees and expenses, as a result of this action.

3           14.     Under state common law, Aidata and Aidma must indemnify S.P. Richards to the  
4 extent that any of the gel wrist rest and mousepads sold by Aidata and Aidma to S.P. Richards are  
5 found to infringe U.S. Patent No. 5,566,913 in this action.

6           15.     Aidata and Aidma are obligated to indemnify for all of the loss, damage, cost and  
7 expense, including without limitation attorneys' fees and expenses that S.P. Richards incurs in this  
8 action.  
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10  
11 WHEREFORE, S.P Richards respectfully requests that the Court grant it the following relief:  
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- 13           A.     Judgment in S.P Richards' favor and against Aidata and Aidma on all Counts  
14 contained in S.P. Richards' Third Party Complaint;
- 15           B.     An award of damages for all loss and damage incurred by S.P. Richards by reason  
16 of Prokop's Complaint and in pursuit of this Third Party Complaint in an amount to  
17 be proven at trial;
- 18           C.     An award of all costs and expenses, including reasonable attorneys' fees and costs,  
19 incurred by S.P. Richards in defending against Plaintiff Prokop's claims and in  
20 pursuit of this Third Party Claim in an amount to be proven at trial;
- 21           D.     An award of pre- and post-judgment interest;
- 22           E.     All such other and further relief as the Court deems just and equitable; and
- 23           F.     That the Court order a trial by jury on all appropriate issues.  
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1 DATED this 16th day of October, 2007.

2 MERRICK HOFSTEDT & LINDSEY, P.S.

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5 Thomas R. Merrick, WSBA No. 10945  
6 Attorneys for Defendant S.P. Richards Company

7 Of Counsel:

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the persons listed below:

Vision L. Winter  
Ryan Yagura  
Michael A. Moore

MERRICK, HOFSTEDT & LINDSEY, P.S.

By: /s/Marci L. Brandt

Marci L. Brandt

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DEFENDANT S.P. RICHARDS  
COMPANY'S THIRD PARTY COMPLAINT- 5

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